

Board of Appeals  
August 10, 2006

INDEX OF MEMORANDA  
A-520 (A)

No.

- 1) Letter to Board of Appeals from Mikel Budde, July 7, 2006
- 2) Final Resolution A-520
- 3) Draft Resolution A-520(A)



..T..Mobile..

July 7, 2006

City of Gaithersburg  
Board of Appeals  
c/o Caroline Seiden  
31 S. Summit Ave.  
Gaithersburg, MD

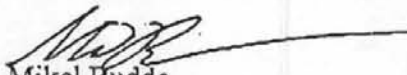
RE: A-520

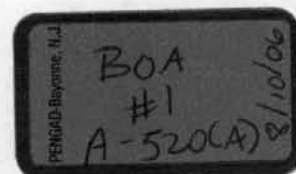
On August 11, 2005, the Board of Appeals of the City of Gaithersburg adopted Special Exception A-520 for the installation of a telecommunications facility on Quince Orchard Road. One condition of approval was that installation must be completed by July 14, 2006 (Condition #2). At this time, T-Mobile Northeast LLC (Formerly Omnipoint Communications CAP Operations, LLC) ("T-Mobile") has not finalized its agreement with Pepco with regard to the installation. As such, construction has not begun, and the July 14 deadline will not be met.

At this time, T-Mobile respectfully requests a one-year extension of A-520 so that it may finalize negotiations with Pepco. This particular installation is unique to T-Mobile and Pepco, and will be the first where a new wooden pole is installed within an existing line. Because of the uniqueness to this project, our typical contract and construction specifications have to be modified to fit this installation.

Thank you for your consideration in this matter. If you have any further questions, please do not hesitate to contact me at 443-538-5304.

Respectfully Submitted,

  
Mikel Budde  
Zoning Manager  
T-Mobile Northeast LLC





CITY OF GAITHERSBURG  
31 South Summit Avenue  
Gaithersburg, Maryland  
(301) 258-6330

**BOARD OF APPEALS  
RESOLUTION APPROVING**

AN APPLICATION REQUESTING A SPECIAL EXCEPTION TO ERECT  
A TELECOMMUNICATION FACILITY ATTACHED TO A NEW SEVENTY (70) FOOT  
WOODEN UTILITY POLE LOCATED IN THE R-A (LOW DENSITY RESIDENTIAL)  
ZONE AS ALLOWED BY SECTION 24-25(11) OF THE ZONING ORDINANCE (CHAPTER  
24 OF THE CITY OF GAITHERSBURG CODE), WEST OF QUINCE ORCHARD ROAD  
IN THE PEPCO RIGHT-OF-WAY, GAITHERSBURG, MARYLAND.

**A-520**

OPINION

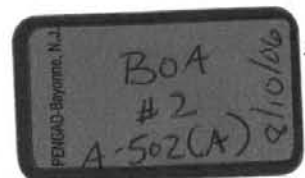
This matter has come before the Board of Appeals as a special exception request for a telecommunications facility consisting of three (3) panel-type antennas attached to a proposed 70' wooden utility pole to be erected and owned by the Potomac Electric Power Company (PEPCO) and a 10' x 14' (140 square feet) concrete equipment pad and equipment cabinets. The Board's authority in these matters is provided pursuant to Article 66B, Section 4.07, of the Annotated Code of the State of Maryland, and Section 24-187(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board to hear and decide only those special exceptions as the Board of Appeals is specifically authorized to pass on by the terms of this Chapter. This case concerns a request for the approval of a telecommunications facility attached to a proposed PEPCO pole and related ground equipment west of Quince Orchard Drive in the PEPCO right-of-way (ROW) in Gaithersburg, Maryland in the R-A (Low Density Residential) Zone.

Operative Facts

In 1998, the Mayor and City Council of Gaithersburg approved Ordinance O-21-97, which allows telecommunication facilities, subject to requirements, to be permitted by special exception [Section 24-25(11)] in the R-A Zone. The purpose of a use by special exception is to allow the Board of Appeals to prescribe appropriate conditions and limitations on these uses.

Mike Budde, on behalf of Omnipoint Communications CAP Operations, LLC, originally filed the application and exhibits on June 22, 2005. The application requested a special exception for a telecommunications facility (antennas and related ground equipment) on a proposed PEPCO pole west of Quince Orchard Drive in the R-A (Low-Density Residential) Zone, Gaithersburg, Maryland.

In accordance with Section 24-188(d), the Planning Commission reviewed the special exception request at their July 6, 2005 regularly scheduled meeting. Following introduction and





### Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions, which define the nature and extent, a special exception that may be granted by this Board and the criteria upon which they may be approved.

\* \* \*

#### **DIVISION 1. R-A ZONE, LOW DENSITY RESIDENTIAL**

\* \* \*

#### **Sec. 24-25 . Uses permitted as special exceptions.**

\* \* \*

- (11) Telecommunications facilities, subject to requirements of Section 24-167A(D)(2).

\* \* \*

**Section-24-167A. Satellite television antennas and towers, poles, antenna and /or other structures intended for use in connection with transmission or receipt of radio or television signals or telecommunications facilities.**

\* \* \*

(D) Telecommunications facilities.

1. Standards when allowed as permitted use:

The following standards apply in those zones in which telecommunications facilities are allowed as a permitted use.

- (a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least 30 feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least 30 feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than 25% of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than 25% of the roof area may be approved by the board of appeals as a special exception in accordance with Sub-section 2 of this Section.



impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.

- (j) Every free standing monopole or support structure and any unmanned equipment or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

2. Standards and requirements applicable to special exceptions for telecommunications facilities.

- (a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:
  - (1) Complies with all of the standards contained in Section 167A(D)1.
  - (2) The location selected is necessary for the public convenience and service.
  - (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.
  - (4) The location selected for a monopole is more than 300 feet from either the nearest boundary of a historic district or more than 300 feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.
  - (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennas and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennas. The holder of a special exception may not refuse to permit the co-location of two additional antennas and related equipment buildings or cabinets unless collocation is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.
  - (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least 30 feet in height in any multi-family residential zone or non-residential zone; and 50 feet in height in any one family residential zone. Rooftop telecommunications facilities may not be located on a one family residence.
  - (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the Board of Appeals must find that it is to be located at a height at least 30 feet on a building located in a multi-family residential



- (4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone, provided the board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.
- (c) Location Requirements for structure. A monopole or other support structure must be located as follows:
  - (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.
  - (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.
- (d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.
- (e) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the Federal Communications Commission, the Federal Aviation Administration or the board.
- (f) Removal of Telecommunications facilities. Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by the telecommunication carrier.

\* \* \*

ARTICLE VII. Board of Appeals.

\* \* \*

**Sec. 24-187. Powers and duties.**

The board of appeals shall have the following functions, powers, and duties:



(6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

(7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and

(8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

#### Findings and Conclusions

Based on the appellants' arguments, binding testimony and evidence of record, the Board finds that the application proposes to construct, operate and maintain three (3) panel-type antennas measuring approximately 54" high x 12" wide x 4" in depth attached to a newly installed 70' wooden PEPCO pole and a screened 10' x 14' (140 square feet) concrete equipment pad and equipment cabinets at a height of five (5) feet, four (4) inches each. The location of the antennas is within the R-A (Low-Density Residential) Zone and is allowed by special exception as stated in Section 24-25(11) of the Zoning Ordinance (Chapter 24 of the City Code).

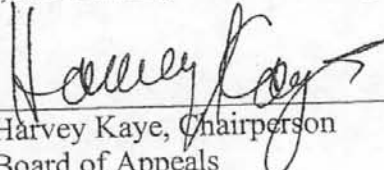
The applicant has shown that the height of the proposed utility pole will be 70' and will be similar in height and color to other utility poles on the property. The facility will be located approximately 50' west of an existing telecommunications facility on PEPCO pole #736473-0926 west of Quince Orchard Road. The proposed panel-type antennas, which are 54 inches in height, will be flush mounted at the top of the new PEPCO pole and will extend beyond the top of the pole approximately two and one-half (2 ½) feet. The unmanned equipment cabinets for the antennas are located on the ground east of and adjacent to the PEPCO pole. The equipment cabinets are five (5) feet, four (4) inches in height and are attached to a 10' x 14' (140 square feet) concrete pad. A revised landscape plan providing an appropriate fence and adequate screening of the equipment cabinets and driveway extension will be submitted to City staff prior to the issuance of building permits. The visual impact of the proposed antennas is minimal due to the size of the existing pole, the number of existing poles in the immediate vicinity and the size of the antennas. The propagation maps have shown that the location selected will enhance the coverage of Omnipoint's telecommunication service for public convenience and service and fill a void within the system of the provider.

The Board finds that the applicant has proved that the application is permissible by Section 24-25(11), of the Zoning Ordinance and that it also complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals. The proposed use is consistent with the 1997 master plan of Neighborhood Five in which this property is located. The applicant has shown compliance with the standards and requirements specifically set forth for telecommunication facilities in Sections 24-167A(D)(1) and (2) as discussed above. The applicant's testimony and coverage maps have indicated the need for additional service in the area and have shown that co-locating on an existing monopole in the area is technically impractical due to the safety concerns of PEPCO. The applicant has therefore,

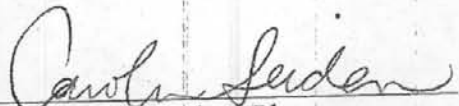


3. Prior to the issuance of a building permit, applicant is to work with staff regarding the installation of an appropriate fence and landscaping to screen the equipment cabinets and driveway extension.
4. Upon installation and operation, applicant is to submit actual coverage maps to the Board of Appeals.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 11th day of August, 2005. Board Members Kaye, Knoebel, Macdonald, Burke and Rieg being present and voting in favor of the action.

 Aug. 26, 2005  
Harvey Kaye, Chairperson      DATE  
Board of Appeals

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in public meeting assembled, on the 11th day of August, 2005

  
Caroline H. Seiden, Planner  
Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered be appealed by any person aggrieved by the decision of the Board and a part to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

The Board of Appeals may reconsider its decision in accordance with its Rules of Procedure upon the request of any party; provided such request is received by writing not more than ten (10) days from the date the Board of Appeals renders its final decision.



CITY OF GAITHERSBURG  
31 South Summit Avenue  
Gaithersburg, Maryland  
(301) 258-6330

**BOARD OF APPEALS  
RESOLUTION APPROVING**

AN APPLICATION REQUESTING AN AMENDMENT TO SPECIAL EXCEPTION A-520 TO ERECT A TELECOMMUNICATION FACILITY ATTACHED TO A NEW SEVENTY (70) FOOT WOODEN UTILITY POLE LOCATED IN THE R-A (LOW DENSITY RESIDENTIAL) ZONE AS ALLOWED BY SECTION 24-25(11) OF THE ZONING ORDINANCE (CHAPTER 24 OF THE CITY OF GAITHERSBURG CODE), WEST OF QUINCE ORCHARD ROAD IN THE PEPCO RIGHT-OF-WAY, GAITHERSBURG, MARYLAND.

**A-520 (A)**

OPINION

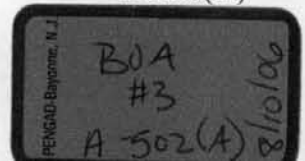
This matter has come before the Board of Appeals as an amendment to special exception A-520 request for a telecommunications facility consisting of three (3) panel-type antennas attached to a proposed 70' wooden utility pole to be erected and owned by the Potomac Electric Power Company (PEPCO) and a 10' x 14' (140 square feet) concrete equipment pad and equipment cabinets. The Board's authority in these matters is provided pursuant to Article 66B, Section 4.07, of the Annotated Code of the State of Maryland, and Section 24-191(b) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) which authorizes the Board to amend or modify the terms or conditions of a special exception upon the request of a special exception holder. This case concerns a request for the approval of a telecommunications facility attached to a proposed PEPCO pole and related ground equipment west of Quince Orchard Drive in the PEPCO right-of-way (ROW) in Gaithersburg, Maryland in the R-A (Low Density Residential) Zone.

Operative Facts

In 1998, the Mayor and City Council of Gaithersburg approved Ordinance O-21-97, which allows telecommunication facilities, subject to requirements, to be permitted by special exception [Section 24-25(11)] in the R-A Zone. The purpose of a use by special exception is to allow the Board of Appeals to prescribe appropriate conditions and limitations on these uses.

On August 11, 2005 the Board of Appeals granted a special exception for a telecommunications facility (antennas and related ground equipment) on a proposed PEPCO pole west of Quince Orchard Road in the R-A (Low-Density Residential) Zone, Gaithersburg, Maryland, with the following four conditions:

1. Prior to the issuance of a building permit, applicant is to provide an executed lease from PEPCO that requires at such time as Omnipoint Communications CAP Operations, LLC ceases to operate, that the antennas, cabinets and associated





equipment must be removed.

2. Installation of antennas, cabinets, associated equipment, fence and landscaping must be completed by July 14, 2006.
3. Prior to the issuance of a building permit, applicant is to work with staff regarding the installation of an appropriate fence and landscaping to screen the equipment cabinets and driveway extension.
4. Upon installation and operation, applicant is to submit actual coverage maps to the Board of Appeals.

On July 7, 2006 the applicant, T-Mobile Northeast LLC (formerly Omnipoint Communications CAP Operations LLC) forwarded a letter to the Board of Appeals requesting a one-year extension of A-520 so that it may finalize negotiations with the property owner, Pepco. No changes to the facility were proposed.

The Board of Appeals reviewed the amendment request at its regular meeting on Thursday, August 10, 2006, at 7:30 p.m. at City Hall. Planner Seiden noted that a public hearing is not required for an amendment to an existing special exception. She also noted that the request for an extension was received prior to July 14, 2006. However, the Board of Appeals did not meet prior to the actual expiration date.

The Board reviewed three exhibits. Mr. Mike Budde presented argument regarding the time extension request. There was no additional testimony either for or against the application.

#### Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions, which define the nature and extent, a special exception that may be granted by this Board and the criteria upon which they may be approved.

\* \* \*

#### **DIVISION 1. R-A ZONE, LOW DENSITY RESIDENTIAL**

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#### **Sec. 24-25 . Uses permitted as special exceptions.**

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- (11) Telecommunications facilities, subject to requirements of Section 24-167A(D)(2).

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#### **Section-24-167A. Satellite television antennas and towers, poles, antenna and /or other**



**structures intended for use in connection with transmission or receipt of radio or television signals or telecommunications facilities.**

\*

\*

\*

(D) Telecommunications facilities.

1. Standards when allowed as permitted use:

The following standards apply in those zones in which telecommunications facilities are allowed as a permitted use.

- (a) An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop of buildings on privately owned land which are at least 30 feet in height. An antenna may be mounted on the wall of a building facing the rear lot line at a height of at least 30 feet. An antenna may not be mounted on the rear wall of a building on a through lot. A telecommunications facility antenna must not be mounted on the facade of any building designed or used as a one family residential dwelling. An unmanned equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy more than 25% of the roof area. Unmanned equipment buildings or cabinets that increase the roof coverage of all roof structures to occupy more than 25% of the roof area may be approved by the board of appeals as a special exception in accordance with Sub-section 2 of this Section.
- (b) Telecommunications antennas may be attached to a free standing monopole on privately owned land. A free standing monopole including antenna structure for a telecommunications facility is permitted up to 199 feet in height with a set back of one foot for every foot of height from all adjoining residentially zoned properties, and a set back of one-half foot for every foot of height from adjoining non-residential properties.
- (c) An unmanned equipment building or cabinet included as part of a telecommunications facility on privately owned land must not exceed 560 square feet and 12 feet in height. Any such equipment building or cabinet must be so located as to conform to the applicable set back standards of the zone in which the property is classified.
- (d) *Public Property.* A private telecommunication facility may be located on public property or attached to an existing structure owned or operated by the City, or by a county, state, federal or other governmental agencies subject to the same conditions and requirements as are applicable to such facilities on privately owned property. In addition, the use of any property owned by the City of Gaithersburg shall be at the discretion of the City Manager. A private telecommunications facility may be located on the property of an independent fire department or rescue squad subject to the same requirements as are applicable to private property.



- (e) All such antennas shall be located and designed so as to minimize visual impact on surrounding properties and from public streets.
- (f) No signs are permitted in connection with any telecommunications facility.
- (g) No lights are permitted on any monopole or antenna unless required by the Federal Communications Commission, the Federal Aviation Administration, or the City.
- (h) All monopoles erected as part of a telecommunications facility must maintain at least three telecommunications carriers provided, however, that a monopole or other support structure designed or engineered to accommodate less than three telecommunications carriers may be permitted by special exception when approved by the Board of Appeals.
- (i) No more than one monopole is permitted on a lot or parcel of land and, no two monopoles may be located within 1000 feet of each other in any zone in which such facilities are permitted uses. In any such zones more than one monopole may be permitted on a lot or parcel and two or more monopoles may be located within 1,000 feet of each other by special exception approved by the Board of Appeals. A special exception to permit either the location of more than one monopole on a lot or parcel or two or more monopoles within 1,000 feet of each other may only be approved by the Board of Appeals if the applicant establishes that existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility. In addition, any such application must comply with all of the other standards and requirements applicable to special exceptions for telecommunications facilities.
- (j) Every free standing monopole or support structure and any unmanned equipment or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by any telecommunication carrier.

2. Standards and requirements applicable to special exceptions for telecommunications facilities.

- (a) An application for a special exception for a telecommunication facility may be approved by the board of appeals if the board finds that:
  - (1) Complies with all of the standards contained in Section 167A(D)1.
  - (2) The location selected is necessary for the public convenience and service.
  - (3) The location selected is not in an area in which there is an over concentration of freestanding monopoles, towers or similar structures.
  - (4) The location selected for a monopole is more than 300 feet from either the



nearest boundary of a historic district or more than 300 feet from the nearest boundary of the environmental setting of a historic resource that is not within a historic district.

- (5) The location selected for a monopole is suitable for the co-location of at least three (3) telecommunication antennas and related unmanned cabinets or equipment buildings and the facility is designed to accommodate at least three (3) antennas. The holder of a special exception may not refuse to permit the co-location of two additional antennas and related equipment buildings or cabinets unless collocation is technically impractical because of engineering and because it will interfere with existing service. The refusal to allow such co-location without just cause may result in revocation of the special exception.
- (6) In the event a telecommunications facility is proposed to be located on a rooftop or structure, the board of appeals must find that the building is at least 30 feet in height in any multi-family residential zone or non-residential zone; and 50 feet in height in any one family residential zone. Rooftop telecommunications facilities may not be located on a one family residence.
- (7) In the event a telecommunications antenna is proposed to be located on the facade of a building, the Board of Appeals must find that it is to be located at a height at least 30 feet on a building located in a multi-family residential zone or non-residential zone and at a height greater than fifty (50) feet in any one family residential zone. A telecommunications antenna must not be mounted on the facade of a one family residence.
- (8) In any residential zone the board of appeals must find that the equipment building or cabinet does not exceed 560 square feet and 12 feet in height, and is faced with brick or other suitable material on all sides and that the facades are compatible with the other building or buildings located on the lot or parcel. Equipment buildings and cabinets must be landscaped to provide a screen of at least three feet. The Board may require that monopoles: 1) be camouflaged; 2) be placed within a part of an existing structure; or 3) be constructed in such a way that the monopole appears to be part of an existing structure.
- (9) The board must further find that any equipment building or cabinet is located in conformity to the applicable set back standards of the zone.
- (10) The board must find that the addition of an equipment building or cabinet proposed to be located on the roof of a building, in combination with all other roof structures does not create the appearance of an additional story and does not increase the roof coverage by more than an additional 10 percent. The board must also find that the structure is not visually intrusive.
- (11) The board must also find that a free standing monopole or other support



structure is proposed to hold no less than three telecommunications carriers. The board may approve a monopole or other support structure with fewer than three telecommunications carriers if the applicant establishes that (a) existing telecommunications facilities serving the same service area have no additional capacity to include the applicant's antenna or (b) the applicant establishes that co-location on an existing monopole is technically impractical and that engineering criteria establish the need for the requested facility; and the approval of the application will not result in an over concentration of similar facilities in the surrounding area.

(b) Area requirements.

- (1) The minimum parcel or lot area is sufficient to accommodate the location requirements for the monopole or other support structure as hereinafter set forth in subsection (C).
- (2) In no event may the minimum parcel or lot area be less than the lot area required for the zone in which the monopole or support structure is located.
- (3) For the purpose of this section, the location requirement is measured from the base of the monopole or other support structure to the perimeter property line.
- (4) The board of appeals may, upon request of the applicant, reduce the location requirement to not less than the building set back for the applicable zone, provided the board makes the additional finding that the reduced location requirement results in a less visually obtrusive location for the monopole or other support structure. In making that additional finding, the board shall consider the height of the structure, topography, existing vegetation, planned landscaping, the impact on adjoining and nearby residential properties, if any, and the visibility of the monopole or other support structure from adjacent streets.

(c) Location Requirements for structure. A monopole or other support structure must be located as follows:

- (1) In residential zones, a distance of one foot from the property line for every foot of height of the monopole or other support structure.
- (2) In non-residential zones, monopoles and other support structures must be located at a distance of one-half foot from the property line of adjacent non-residentially zoned property for every foot of height of the monopole or other support structure. Such structures must be located a distance of one foot from the property line of adjacent residentially zoned property for every foot of height of such structure.

(d) Signage. No signs are permitted in connection with the establishment of a telecommunications facility.



- (e) Lights. No lights or other illumination devices are permitted on a monopole or other support structure unless required by the Federal Communications Commission, the Federal Aviation Administration or the board.
- (f) Removal of Telecommunications facilities. Every free standing monopole or support structure and any unmanned equipment building or cabinet associated with a telecommunications facility must be removed at the cost of owner of the facility when the telecommunications facility is no longer in use by the telecommunication carrier.

\* \* \*

## ARTICLE VII. Board of Appeals.

\* \* \*

### **Sec. 24-187. Powers and duties.**

The board of appeals shall have the following functions, powers, and duties:

\* \* \*

- (b) Special Exception. To hear and decide only those special exceptions as the board of appeals is specifically authorized to pass on by the terms of this chapter.

The board of appeals is empowered to prescribe appropriate conditions and limitations upon the approval of special exceptions. Special exceptions approved by the board shall be implemented in accordance with the terms and/or conditions set forth in the Board's decision and shall include the requirement that the petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorneys, to the extent that such evidence and representations are identified in the board's opinion approving the special exception. Violation of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such special exception.

The board of appeals shall prescribe a time limit within which the use for which the special exception is required shall be commenced or completed. Failure to begin or complete, or both, such action within the time limit set shall void the special exception unless otherwise extended by the board.

\* \* \*

### **Sec. 24-189. Findings required.**

\* \* \*

- (b) Special exceptions. A special exception may be granted when the board of appeals



finds from the evidence of record that the proposed use:

- (1) Is a permissible special exception within the zone and that the application therefor complies with all procedural requirements set forth in this article;
- (2) Complies with all standards and requirements specifically set forth for such use as may be contained in this chapter;
- (3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, toxicity, glare or physical activity;
- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structure or conversion of existing structures; as well as the intensity and character of activity, traffic and parking conditions and number of similar uses;
- (5) Will be consistent with the master plan or other planning guides or capital programs for the physical development of the district;
- (6) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;
- (7) Will be served by adequate public services and facilities, including police and fire protection, water and sanitary sewer, storm drainage, public roads and other public improvements; and
- (8) When located in a residential zone where buildings or structures are to be constructed, reconstructed or altered shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screening or fencing.

**Sec. 24-191. Special exception implementation, modification and abandonment.**

\* \* \*

(b) The board of appeals is authorized to amend or modify the terms or conditions of a special exception upon the request of the special exception holder or upon recommendation of any city department or the planning commission, or pursuant to a show cause hearing provided in section 24-192 of this Code. No public hearing shall be required unless the proposed modification will substantially change the nature, character or intensity of the use or materially impact the neighborhood in which such use is located. If the board determines that a hearing is required, the notice and hearing provisions contained in section 24-188 of this Code shall apply.

\* \* \*

Findings and Conclusions

The Board finds that the request of the special exception holder does not require a public



hearing and that a one-year time extension does not alter any previous findings that the application complies with all requirements for the development of a telecommunications facility.

Based on the appellants' arguments, binding testimony and evidence of record, the Board finds that the application proposes to construct, operate and maintain three (3) panel-type antennas measuring approximately 54" high x 12" wide x 4" in depth attached to a newly installed 70' wooden PEPCO pole and a screened 10' x 14' (140 square feet) concrete equipment pad and equipment cabinets at a height of five (5) feet, four (4) inches each. The location of the antennas is within the R-A (Low-Density Residential) Zone and is allowed by special exception as stated in Section 24-25(11) of the Zoning Ordinance (Chapter 24 of the City Code).

The applicant has shown that the height of the proposed utility pole will be 70' and will be similar in height and color to other utility poles on the property. The facility will be located approximately 50' west of an existing telecommunications facility on PEPCO pole #736473-0926 west of Quince Orchard Road. The proposed panel-type antennas, which are 54 inches in height, will be flush mounted at the top of the new PEPCO pole and will extend beyond the top of the pole approximately two and one-half (2 ½) feet. The unmanned equipment cabinets for the antennas are located on the ground east of and adjacent to the PEPCO pole. The equipment cabinets are five (5) feet, four (4) inches in height and are attached to a 10' x 14' (140 square feet) concrete pad. A revised landscape plan providing an appropriate fence and adequate screening of the equipment cabinets and driveway extension will be submitted to City staff prior to the issuance of building permits. The visual impact of the proposed antennas is minimal due to the size of the existing pole, the number of existing poles in the immediate vicinity and the size of the antennas. The propagation maps have shown that the location selected will enhance the coverage of T-Mobile's telecommunication service for public convenience and service and fill a void within the system of the provider.

The Board finds that the applicant has proved that the application is permissible by Section 24-25(11), of the Zoning Ordinance and that it also complies with the procedural requirements set forth in Article VII of the Zoning Ordinance provided for the review of special exceptions by the Board of Appeals. The proposed use is consistent with the 1997 Master Plan of Neighborhood Five in which this property is located. The applicant has shown compliance with the standards and requirements specifically set forth for telecommunication facilities in Sections 24-167A(D)(1) and (2) as discussed above. The applicant's testimony and coverage maps have indicated the need for additional service in the area and have shown that co-locating on an existing monopole in the area is technically impractical due to the safety concerns of PEPCO. The applicant has therefore, established the need for an additional monopole within 1,000 feet of an existing monopole<sup>1</sup>, as required for Board of Appeals approval, per Section 24-167A(D)(1)(i).

The testimony of the applicant's representatives has shown that such use will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable vibrations, fumes, odors, dust, toxicity, glare or physical activity. The applicant has shown that this use will also not adversely affect the health, safety, security, morals or general welfare of residents, visitors or

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<sup>1</sup> While it is not clear that the proposed pole, with antennae, and the existing pole are monopoles, the Board, in an exercise of caution, has treated them as monopoles.



workers in the area.

Because the proposed antennas are to be within the PEPCO Right-Of-Way as attached to a PEPCO pole that will be approximately 70 feet in height, the proposed antennas will be efficiently located on the pole with no other telecommunication carriers. The proposed antennas are small in size in comparison to the PEPCO pole and other adjacent poles and the ground equipment will be screened. The applicant has shown that this application is in harmony with the general character of the neighborhood in relation to the design and scale of the antennas. Because the use will only require monthly maintenance checks consisting of one vehicle, this use will not impact the traffic or parking conditions within the neighborhood. The land and structure will not increase the need for more services. The applicant has shown that this use is not located near or within any of the City's historic districts. In conclusion, the Board of Appeals has found that the petitioner has submitted sufficient evidence, arguments and testimony for the approval of a telecommunications facility by Mike Budde on behalf of T-Mobile Northeast LLC. The applicant has shown compliance with Sections 24-167A(D)(1) and (2) and 24-189(b).

#### RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the Board of Appeals of the City of Gaithersburg on the 10th day of August, 2006, that Case A-520 (A), the petition of Mike Budde for T-Mobile Northeast LLC, requesting an amendment to special exception A-520 for a telecommunications facility in the R-A (Low Density Residential) Zone attached to a proposed PEPCO pole fifty (50) feet west of PEPCO pole #736473-0926 west of Quince Orchard Road, Gaithersburg, Maryland, be APPROVED with the following conditions.

1. Prior to the issuance of a building permit, applicant is to provide an executed lease from PEPCO that requires at such time as T-Mobile Northeast LLC ceases to operate, that the antennas, cabinets and associated equipment must be removed.
2. Installation of antennas, cabinets, associated equipment, fence and landscaping must be completed by July 14, 2007.
3. Upon installation and operation, applicant is to submit actual coverage maps to the Board of Appeals.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 10th day of August 2006. Board Members Kaye, Knoebel, Macdonald, Trojak and Rieg being present and voting in favor of the action.

Harvey Kaye, Chairperson  
Board of Appeals

DATE



THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in public meeting assembled, on the 10th day of August, 2006.

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Caroline H. Seiden, Planner  
Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a part to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.